

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

| | | |
|---------------------|---|-------------------------|
| Margaret B. Graham, |) | |
| |) | C.A. No. 4:04-23357-TLW |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | ORDER |
| Office Depot, Inc., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the Court for review of the Report and Recommendation (the “Report”) filed by United States Magistrate Judge Thomas E. Rogers, III, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In the Report, Magistrate Judge Rogers recommends that the District Court dismiss the complaint without prejudice and without issuance and service of process because the instant case raises the same issues as a case contemporaneously filed and currently pending in this Court. The plaintiff has not filed objections to the Report.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether

or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted). In light of this standard, the Court has reviewed the Report. The Court accepts the Report.

It is therefore **ORDERED** that the Report be **ACCEPTED**, and that this case be **DISMISSED** without prejudice and without issuance and service of process.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

May 19, 2005
Florence, South Carolina